

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 634

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; AMENDING AND ENACTING
SECTIONS OF THE SEVERANCE TAX BONDING ACT TO PROVIDE FOR
INVESTMENT OF STATE MONEY IN INDEPENDENT FILM PRODUCTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-27-5 NMSA 1978 (being Laws 1983,
Chapter 306, Section 7, as amended) is amended to read:

"7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--The
severance tax permanent fund shall be invested in separate
differential rate and market rate investment classes.

"Differential rate investments" are permitted in Sections
7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17,
7-27-5.22 and 7-27-5.24 through [~~7-27-5.26~~] 7-27-5.27 NMSA 1978
and are intended to stimulate the economy of New Mexico and to
provide income to the severance tax permanent fund. "Market

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underscored material = new
[bracketed material] = delete

1 rate investments" are investments that are not differential
2 rate investments and are intended to provide income to the
3 severance tax permanent fund. All market rate investments and
4 differential rate investments shall be invested in accordance
5 with the Uniform Prudent Investor Act and shall be accounted
6 for in accordance with generally accepted accounting
7 principles."

8 Section 2. A new section of the Severance Tax Bonding
9 Act, Section 7-27-5.27 NMSA 1978, is enacted to read:

10 "7-27-5.27. [NEW MATERIAL] INVESTMENT IN INDEPENDENT
11 FILMS PRODUCED IN NEW MEXICO.--

12 A. No more than one-half of one percent of the
13 market value of the severance tax permanent fund may be
14 invested in New Mexico resident independent or underrepresented
15 minority filmmakers pursuant to the provisions of this section.

16 B. If an investment is made under this section, not
17 more than five million dollars (\$5,000,000) of the amount
18 authorized for investment pursuant to Subsection A of this
19 section shall be invested in any one New Mexico resident
20 independent or underrepresented minority filmmaker.

21 C. The state investment officer shall make
22 investments pursuant to this section only upon approval of the
23 council pursuant to the advice of a professional film advisor
24 knowledgeable about the New Mexico resident independent and
25 underrepresented minority filmmaking community, film financing

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1 and distribution. The state investment officer may make debt
2 investments pursuant to this section only in New Mexico
3 resident independent or underrepresented minority film projects
4 pursuant to rules developed and adopted by the private equity
5 investment advisory committee and the council.

6 D. In return for a negotiated percentage
7 participation in any profits generated by the film and any and
8 all derivative properties, the state investment officer may
9 make a loan at a below-market rate of interest, with respect to
10 an eligible New Mexico resident independent or underrepresented
11 minority film project and pursuant to rules developed and
12 adopted by the private equity investment advisory committee and
13 the council that:

14 (1) are based on a point system to prioritize
15 productions developed by and subject to yearly review by the
16 governor's council on film and media industries;

17 (2) allow producers the option to select a
18 pre-approved agreement for the state's post break-even revenue
19 participation in the project of a contingent deferral of one
20 hundred basis points per year of the outstanding loan amount
21 until repayment to be paid prior to any net profits to third
22 parties and five percent of post break-even revenue or to
23 negotiate an agreement with the state;

24 (3) require a full guaranteed repayment of one
25 hundred percent of the principal, pursuant to a letter of

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1 credit from a banking institution rated A- or better, by
2 entities with a BBB credit rating or better or by cash-
3 equivalent instruments held in an interest-bearing secure
4 account;

5 (4) include default provisions that are
6 limited to fraud and material misrepresentation, nondelivery of
7 film, nonpayment of loan when due and nonpayment of profit
8 participation when collected, earned and due;

9 (5) require completion bonding; and

10 (6) require that at least:

11 (a) eighty percent of the principal
12 photography be made in New Mexico;

13 (b) sixty percent of the payroll be New
14 Mexico payroll; and

15 (c) two of the three principal above-
16 the-line participants be New Mexico residents or
17 underrepresented minorities.

18 E. As used in this section, "minority" means
19 African Americans, Hispanic Americans, Asian Americans or
20 Native Americans."